IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR.

O R D E R

Smt.Vidhya Devi & Ors. Vs. State of Rajasthan & Anr.
(S.B.CRIMINAL REVISION PETITION NO.886/2005)

DATE OF ORDER: MARCH 2, 2007

P R E S E N T

HON'BLE MR.JUSTICE GOPAL KRISHAN VYAS

Mr.G.R.Goyal, for the petitioners
Mr.J.P.S.Choudhary, Public Prosecutor
Mr.N.L.Joshi, for non-petitioner No.2

BY THE COURT:

By way of this revision petition, the petitioners are challenging the order dated 3rd May, 2005 passed by learned Chief Judicial Magistrate, Sri Ganganagar on F.R. No. 2/2004 (in F.I.R. No.451/2004), Police Station, Kotwali, Sri Ganganagar in Cr.Case No.177/2005 by which the Final Report filed by the police was rejected and learned trial court took cognizance on a protest petition filed by non-petitioner No.2 against the petitioners for offence under Sections 420 & 120-B I.P.C. and summoned the accused petitioners by non-bailable warrants.

The brief facts of the case are that the non-petitioner No.2 filed an application before Superintendent of Police, Sri Ganganagar on 5.11.2003 alleging therein that he is doing

business of transport in Shop No.4-A situated at Miner Sri Ganganagar and Smt.Vidhya Devi is the owner of the shop. It is further alleged that he is tenant in this Shop at the ground floor and on the first floor Mehboob Khan used to work as Band Master. The non-petitioner No.2 complainant alleged that he entered into an agreement to sale with Smt.Vidhya Devi on 7th August, 1997 for the sale of Shop No.4 in consideration of Rs.2,85,000/-, out of which Rs.1,50,000/- was paid as token money and the rest of amount was paid by him on 28.8.1997. It is also stated that Mehaboob Khan entered into an agreement to sale with him for the purchase of First floor of this shop for a consideration of Rs.1,70,000/- and out of which Rs.75,000/- was received by him as earnest money. As per the complainant when he was shifting to Hanumangarh then Mehboob Khan made a proposal to him that he wants to take ground floor of the shop on rent so he mortgaged the ground floor of the shop for a consideration of Rs.1,25,000/- and possession was handed over to Mehboob Khan. The complainant further alleged that a criminal conspiracy took place in between Mehboob Khan and Smt.Vidhya Devi and in furtherance of that a sale deed was executed by Smt.Vidhya Devi in favour of Mehboob Khan's nephew Munwar Khan on 30.7.2003 and when this fact came to his knowledge he lodged a complaint with Superintendent of Police, who forwarded the same to S.H.O., Police Station,

Kotwali, Sri Ganganagar. After registering the case, usual regular investigation took place. Ultimately police found that case is false and gave final report by treating the case of civil nature. The complainant non-petitioner No.2 filed protest petition before the learned Chief Judicial Magistrate, Sri Ganganagar. The learned Chief Judicial Magistrate after hearing arguments on the protest petition took cognizance against the petitioners and rejected the prayer of the Assistant Public Prosecutor for accepting the final report vide order dated 3.5.2005.

The learned counsel for the petitioners argued that it is a case of civil nature and the proceeding pending before the Chief Judicial Magistrate is nothing but abuse of process of the court hence deserves to be quashed. The learned counsel for the petitioners submits that if any agreement was executed by Smt.Vidhya Devi with the complainant then he is very much entitled to file a suit for specific performance of contract against the petitioner. The learned trial court ought to have considered this aspect of the matter because in the investigation it has been found that dispute is of civil nature. It is further submitted by the learned counsel that complainant himself admitted in his complaint that he executed an agreement to sale in favour of petitioner No.2 Mehboob Khan after taking money, whereas in this case the sale deed was executed by petitioner No.1 in favour of petitioner No.3. The police has also given this report that a

compromise had taken place between the complainant and the petitioner No.1 in which he was agreed that Smt.Vidhya Devi will execute a sale deed in favour of petitioner No.2 directly. So from this evidence also no offence is made out against the petitioners. It is also contended that there is no original agreement to sale on record so also the suit for specific performance has already been filed by the complainant. Therefore, in these circumstances it is a case of civil nature and if any agreement was executed by the petitioner No.1 in favour of non-petitioner No.2 then there is a remedy available to non-petitioner No.2 to file a suit for specific performance. In support of his contention the learned counsel for the petitioners invited my attention towards a judgment in Ram Biraji Devi & Anr. vs. Umesh Kumar Singh & Anr. reported in 2006(1) W.L.C. (SC) Page 723. In the said case it has been held that if any agreement is arrived between the parties and executor is not executing sale then for that purpose a suit for specific performance can be filed. The relevant Paras 1 & 12 of the aforesaid judgment run as under:-

> "11. There cannot be any disagreement to the well-settled proposition of law that the High Court should exercise its inherent powers in extreme exceptions to quash an FIR or a complaint. The ratio as laid down in **Trisuns Chemical Industry's** (1999 (8) SCC 686) is of no help and assistance to the complainant in the facts and circumstances of the present case. The complaint instituted does not disclose that an offence under Section 420 is made out. Cognizance taken by the Magistrate thereon against the appellants for offences under Sections 406/419/420

> and 120-B IPC are clearly an abuse of the process of court and interference by this Court is expedient in the interest of justice. This is a case of extreme exception where the High Court ought to have exercised its inherent jurisdiction and power to set aside the unwarranted and unjustified order of the Magistrate impugned before it by the appellants.
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> 12. For the aforementioned reasons, we quash the impugned order of the High Court of Judicature at Patna dated 13.1.2005 passed in Criminal Misc. No.11930 of 2004. Consequently, the complaint filed by the complainant and subsequent order dated 8.8.2003 of the Judicial Magistrate, Gaya, in Complaint Case No.298 of 2003 – T.R. 808/03 whereby and whereunder cognizance of offence under Sections 406, 419, 420 and 1200-B IPC, has been taken against the appellants and summons have been ordered to be issued against them for facing trial for the above said offences shall also stand quashed."

The learned counsel for the complainant vehemently argued that there is material on record on which cognizance was taken by the learned Magistrate. The police has filed F.R. Erroneously. There is evidence on record on which it can be said that offence under Section 420 I.P.C. is made out. The learned counsel for the non-petitioner No.2 vehemently argued that there is no ground for interference in the order.

I have considered the rival submissions. In my opinion, it is a case of civil nature because admittedly an agreement to sale was executed by the petitioner No.1 in favour of non-petitioner No.2 and a part payment thereof was made and if no sale as per the terms and conditions of the agreement was executed by the

petitioner then for the same a remedy of filing suit for specific performance of part of contract is available to the non-petitioner No.2 so also on the basis of judgment reported in 2006(1) W.L.C.(SC) 723 cited by the learned counsel for the petitioners the controversy involved in this case is squarely covered by the said judgment and it is also one of the fact that now the complainant has filed a suit for specific performance of part of contract. Therefore, in this view of the matter, this is a case of civil nature and learned trial court has committed error while taking cognizance for offence under Sections 420 & 120-B I.P.C. against the petitioners, in these circumstances, the petition is allowed. The order impugned dated 3rd May, 2005 passed by the learned Chief Judicial Magistrate, Sri Ganganagar is set aside.

(GOPAL KRISHAN VYAS) J.

BKS/-